AMENDMENT TO RULES COMMITTEE

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OFFERED BY MR. NADLER OF NEW YORK

Page 705, after line 3, insert the following:

SEC. 1640. LOCAL PROJECT DELIVERY IMPROVEMENTS.

(a) High-performing Local Public Agency Designation.—

(1) In general.—The Secretary shall designate high-performing local public agencies based on the criteria in paragraph (3) and consistent with the process described under paragraph (4) to be eligible to exercise the project delivery methods described under this section for projects funded under title 23, United States Code.

(2) Authority.—Nothing in this section shall be construed to prohibit a local public agency from taking any action otherwise authorized to secure and expend Federal funds authorized under chapter 1 of title 23, United States Code.

(3) Criteria.—In designating a high-performing local public agency under this section, the Secretary shall consider the legal, financial, and technical capacity of the applicant.
(4) REQUIREMENTS.—

(A) CALL FOR NOMINATION.—The Secretary shall solicit applications for designation under this section.

(B) GUIDANCE.—The call for nomination under paragraph (1) shall include guidance on the requirements and responsibilities of a high-performing local public agency under this section.

(C) DETERMINATION.—

(i) IN GENERAL.—The Secretary shall have discretion to make any designation under this section.

(ii) APPROVAL.—The Secretary may approve for participation under this program any direct recipient under section 1305 of this Act based on the application under such section. Such approval shall only apply to the direct recipient unless the Secretary determines it is appropriate, based on the criteria in subsection (a)(3), to extend the approval to 1 or more sub-recipients of the direct recipient.

(5) TERM.—Except as provided in paragraph (6), a designation under this subsection—
(A) shall be for a period of not less than 5 years; and

(B) may be renewable.

(6) TERMINATION.—The Secretary shall establish procedures for the termination of a designation under this subsection.

(7) LIMITATION.—The Secretary may establish a limitation on the number of participants in the program, based on the availability of administrative resources and the capacity to provide sufficient oversight of the program established under this section.

(b) PROJECT DELIVERY.—

(1) IN GENERAL.—

(A) METHODS.—The high-performing local public agency may, consistent with the agreement entered into with the Secretary under subsection(c), utilize 1 or more of the project delivery methods described in this subsection, notwithstanding the adoption of such methods by the State.

(B) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a local public agency from using a project delivery method otherwise available to such local public agency under title 23, United States Code.
(2) **FORCE ACCOUNT.**—Notwithstanding subsections (a) and (b) of section 112 of title 23, United States Code, a high-performing local public agency may, subject to the terms of the agreement under subsection (c), complete the construction (as such term is defined under section 101 of such title) of a Federal-aid highway project by force account, provided the recipient is qualified to perform the work in a satisfactory manner based on the criteria in subsection (a)(3), as determined by the Secretary.

(3) **INDEFINITE DELIVERY AND INDEFINITE QUANTITY CONTRACTING.**—Subject to the terms of the agreement under subsection (c), a high-performing local public agency may use indefinite quantity and indefinite delivery contracting, including job order contracting, consistent with the process described under subpart F of part 635 of title 23, Code of Federal Regulations. If determined appropriate by the Secretary, the high-performing local public agency may submit an indefinite delivery and indefinite quantity contracting procedures plan directly to the Secretary for approval.

(4) **ASSUMPTION OF RESPONSIBILITIES OF STATE DEPARTMENTS OF TRANSPORTATION.**—
(A) IN GENERAL.—Subject to the terms of the agreement under subsection (c), a high-performing local public agency may assume, in lieu of a State, for projects covered by an agreement under subsection (c)—

(i) the Federal-aid highway project approval, determination, and oversight responsibilities that a State may assume under section 106 of title 23, United States Code; and

(ii) the responsibility that a State may assume, under section 326 of title 23, United States Code, for determining whether certain designated activities are included within classes of action identified in regulation by the Secretary that are categorically excluded from requirements for environmental assessments or environmental impact statements.

(B) TERMS.—In assuming the responsibilities under subparagraph (A), the high-performing local public agency shall be subject to the same terms, conditions, and requirements at the discretion of the Secretary as would be a State under sections 106(e) and 326 of title
23, United States Code, and any associated regulations and procedures.

(c) Agreement.—

(1) In General.—

(A) Authority.—The Secretary and the high-performing local public agency shall enter into an agreement relating to the extent to which the local public agency may assume the authorities described under this section.

(B) Discretion.—The Secretary shall have the discretion to enter into an agreement under this section for one or more of the project delivery methods described in subsection (b).

(C) Scope.—

(i) In General.—The Secretary may make an approval to assume the responsibilities described under subsection (b) on a single-project, multiple-project, project-type, or programmatic basis.

(ii) Covered Projects.—The authority described under this section may apply to any Federal-aid highway project carried out within the jurisdiction of the
high-performing local public agency, at the
discretion of the Secretary.

(2) **Self-certification of Compliance.**

(A) In general.—The high-performing
local public agency may, at the discretion of the
Secretary, provide for self-certification of com-
pliance for the responsibilities assumed pursu-
ant to the agreement established under this sec-
tion. The Secretary shall establish procedures
governing such self-certification of compliance,
including the frequency of such certification.

(B) Oversight.—If the high-performing
local public agency assumes the role of self-cer-
tification of compliance as described under
clause (i), the Secretary shall establish proce-
dures to conduct risk-based stewardship and
oversight of a local public agency’s performance
of the assumed responsibilities specified in the
agreement under this subsection, as determined
necessary or appropriate by the Secretary.

(3) **Assistance to Local Public Agencies.**

—On request of a local public agency, the Sec-
retary shall provide to the local public agency tech-
nical assistance, training, or other support relating
to—
(A) assuming responsibilities under this section;

(B) developing an agreement under this subsection; or

(C) addressing a responsibility under this section in need of corrective action.

(4) ADOPTION OF STATE PROCEDURES.—Except as otherwise provided in the agreement between the Secretary and the high performing local agency, the local public agency shall use any manuals, standards, procedures, and specifications utilized by the State, as determined appropriate by the Secretary.

(5) CONSULTATION.—In establishing the agreement under this section, the Secretary may require the local public agency to consult with the State department of transportation, as appropriate.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the ability of a high-performing local public agency to partner with a State department of transportation or other recipient of Federal funds under title 23, United States Code, or chapter 53 of title 49, United States Code, to carry out a project.

(e) SAVINGS CLAUSE.—Except as provided in this section, all applicable requirements of title 23, United
States Code, shall apply to projects carried out under this section.

(f) FUNDING.—The Secretary may use for program management, oversight, and technical assistance to high-performing local public agencies amounts made available under section 1305(c)(2) of this Act for technical assistance and administration.

(g) REPORT.—

(1) LOCAL PUBLIC AGENCY REPORT.—Not later than 60 days after the end of each fiscal year, each local public agency designated under this section shall submit to the Secretary a report that includes—

(A) a list of projects carried out under this section;

(B) a description of the authorities assumed under subsection (b), including a summary of the project types carried out under such authorities;

(C) recommendations, if any—

(i) on other authorities that would be appropriate to assume under this section; and

(ii) to improve the effectiveness of the program under this section.
(2) REPORT TO CONGRESS.—Not later than October 1, 2024, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that—

(A) summarizes the findings of each local public agency provided under paragraph (1);

(B) describes the efforts undertaken by both local public agencies and the Secretary to ensure compliance with the requirements of title 23, United States Code; and

(C) provides recommendations from the Secretary to—

(i) improve the administration, oversight, and performance of the program established under this section;

(ii) improve the effectiveness of project delivery for local public agencies;

(iv) evaluate options to expand the authority provided under this section; and

(iii) provide legislative recommendations, if any, based on the outcomes of the program.